

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1397 Limitation of Actions Against Crisis Shelters

SPONSOR(S): Civil Justice Subcommittee, Raschein

TIED BILLS: **IDEN./SIM. BILLS:** SB 1754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Frost	Luczynski
2) Children, Families & Seniors Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In Florida, several types of facilities provide temporary housing and other services for persons in crisis. Such facilities, known as crisis shelters, include:

- Emergency shelters;
- Hurricane evacuation shelters;
- Homeless shelters;
- Domestic violence shelters; and
- Runaway shelters.

Shelters often contract with third party service providers to offer shelter participants with services such as, financial planning, legal services, counseling, and child care.

A tort is a civil wrong for which the law provides a remedy. The purpose of tort law is to fairly compensate a person harmed due to the wrongful acts of another. A court may award damages to an injured person for past and future medical expenses, lost wages, property damage, and pain and suffering. Negligence is the failure to use reasonable care, meaning the care that a reasonably careful person would use under similar circumstances. A property owner may be held liable for a crime or negligent act committed on the property by a third party, provided that the third party was invited onto the property and the crime or negligent act was foreseeable.

Crisis shelters often engage the services of third party service providers and volunteers who are invited to come onto the crisis shelter property. Under current law, the crisis shelter may be liable to a shelter resident, a service provider, or other invitee who is harmed by another resident, service provider or other invitee while on the crisis shelter property, even though the shelter may not have the authority or capability to regulate the shelter participant, third party service provider, or other invitee.

CS/HB 1397 limits the liability of a nonprofit organization operating a crisis shelter, without remuneration, arising from:

- Providing, or failing to provide, temporary housing or support services;
- A third party, with or without remuneration, or another nonprofit organization to whom referrals for support services are made or coordinated, regardless of whether the third party actually provides or fails to provide the services;
- Any criminal activity, theft, injury, loss, damage, or death caused by a shelter resident, another nonprofit organization, or a third party.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Crisis Shelters

There are several types of facilities that provide temporary housing and other services for a person in crisis. Such facilities, known as crisis shelters, include:

- Emergency shelters;
- Hurricane evacuation shelters;
- Homeless shelters;
- Domestic violence shelters; and
- Runaway shelters.¹

Crisis shelters often contract with third party service providers to offer services to program participants, such as:

- Legal services;
- Financial planning;
- Counseling; and
- Child care services.²

Florida Tort Law

A tort is a civil wrong for which the law provides a remedy. The purpose of tort law is to fairly compensate a person harmed due to the wrongful acts of another. A court may award damages to an injured person for past and future medical expenses, lost wages, property damage, and pain and suffering.³

Negligence

Negligence is the failure to use reasonable care, meaning the care that a reasonably careful person would use under like circumstances. In order to prevail in a negligence cause of action an injured person must prove that:

- The defendant owed the plaintiff a duty of care;
- The defendant breached this duty by acting negligently;
- This breach of duty led to the plaintiff's injuries; and
- The plaintiff suffered actual harm.⁴

The test to determine whether a duty exists under Florida negligence law is whether the harm posed to others was foreseeable.⁵ A person or entity who refers a person to a third party service provider may be liable for any harm suffered due to the third party if the harm was foreseeable. For example, a referring attorney may be liable in a client's claim for negligent referral based on a referred attorney's

¹ Backpacks for the Streets, *Types of Shelters and Services* (Dec. 18, 2018), <https://backpacksforthestreet.org/types-of-shelters-and-services/> (last visited Feb. 5, 2020). Lisa Esposito, *What Is a Domestic Violence and Abuse Shelter and How Do I Find One?*, U.S. News (Oct. 25, 2017), <https://health.usnews.com/health-care/patient-advice/articles/2017-10-25/what-is-a-domestic-violence-and-abuse-shelter-and-how-do-i-find-one> (last visited Feb. 2, 2020). Jeffrey Smith, *Hurricane Shelters* (June 1, 2019), <https://wusfnews.wusf.usf.edu/post/hurricane-shelters-what-bring> (last visited Feb. 5, 2020).

² Domestic Shelters, *What Services Do Domestic Violence Programs Provide?* (Jan. 13, 2015), <https://www.domesticshelters.org/news/what-legal-and-financial-services-do-domestic-violence-programs-provide> (last visited Feb. 5, 2020).

³ 17 Fla. Jur 2d Damages § 7.

⁴ 38 Fla. Jur 2d Negligence § 15

⁵ *U.S. v. Stevens*, 994 So. 2d 1062 (Fla. 2008).

failure to timely file a client's action if the referring attorney had reason to believe the referred attorney would commit malpractice.⁶

Premises Liability

With few exceptions, a premises liability claim is based on negligence.⁷ Under current law, an owner or occupier of a premise may be liable for injuries of third-parties sustained while on the landowner's property.⁸ In a cause of action for injuries occurring on the property, the duty which is owed to the third-party depends on the status the third-party has with the property at the time the injury occurs.⁹ Anyone who occupies or controls the property, whether he or she is an owner, agent, contractor, lessee or other person with authority to control the premises, may be liable.¹⁰

In Florida, there are three different categories that can be applied to an individual entering another's premises. The liability of one who occupies or controls the premises differs depending on whether the third-party is an invitee, licensee, or trespasser.¹¹

Invitees

There are three different types of invitees in Florida:

- A business visitor;
- A public invitee; and
- A licensee by express or implied invitation.¹²

The status of each type of invitee is a question of fact determined through use of the "Invitation Test." A person is an invitee under the test where the owner or occupant of the premises, by arrangement of the premises or otherwise, leads the entrant to believe that the premises are intended to be used by visitors for the purpose pursued by the entrant and that such use is in accordance with the owner's or occupant's intention.¹³ A person is a business visitor when he or she is invited on the property for a purpose directly or indirectly related to the business of the owner or occupant of the property.¹⁴ A public invitee is a person who is invited to enter or remain on a property as a member of the public for a purpose for which the land is held open to the public.¹⁵ A licensee by express invitation, such as, for example, a social guest, is also considered an invitee when he or she is explicitly or implicitly invited onto the property by the owner or occupant. An implied invitation may exist where the circumstances would imply an offer by the landowner of an invitation to enter the premises.

An owner or occupier of premises owes an invitee the duty to:

- Use ordinary or reasonable care in keeping the premises in a reasonably safe condition; and
- Warn the invitee of latent or concealed perils that are known or should be known to the owner or occupier of the premises, and which the invitee is unaware and could not discover through the exercise of reasonable care.¹⁶

⁶ *Rivers v. Hertz Corp.*, 121 So. 3d 1078, 1080 (Fla. 3d DCA 2013).

⁷ 41 Fla. Jur 2d Premises Liability § 1

⁸ *Id.*

⁹ 41 Fla. Jur 2d Premises Liability § 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² 41 Fla. Jur 2d Premises Liability § 9.

¹³ *Iber v. R.P.A. Intern. Corp.*, 585 So. 2d 367 (Fla. 3rd DCA 1991).

¹⁴ 41 Fla. Jur 2d Premises Liability § 10.

¹⁵ *Id.*

¹⁶ *Matuskas v. Kassam*, 702 So. 2d 543 (Fla. 5th DCA 1997).

Licensees and Trespassers

A licensee, or an uninvited licensee to avoid confusion with a licensee by invitation, is a person who chooses to enter another person's property solely for their own convenience without an express invitation or an invitation which was reasonably implied under the circumstances. A landowner owes far less of a duty to a licensee than an invitee.¹⁷ A property owner owes a licensee the duty to refrain from wanton negligence or misconduct, to refrain from intentionally exposing the licensee to danger and the duty to warn the licensee of known dangerous conditions that would not be open and obvious to him or her.¹⁸

A trespasser is a person who enters the property of another without the consent of the property owner or occupant without license, invitation or other right.¹⁹ The only duty of an owner or occupant to a trespasser is to avoid willful and wanton injury. However, if the person's presence is discovered, the owner or occupant may also have a duty to warn the trespasser of known dangerous conditions not readily apparent through ordinary observation.²⁰

Premises Liability for Third Party Acts

A property owner may be held liable for a crime or negligent act committed on the property by a third party, provided that the crime or negligent act was foreseeable.²¹ In determining premises liability in Florida, the specific legal category that the plaintiff occupies must first be determined, because only certain types of individuals may assert such a claim. For example, the Third District Court of Appeal has held that a landowner is not liable for foreseeable third-party crimes if the plaintiff came onto the land without invitation.²² An uninvited person, such as an uninvited licensee or trespasser, may not expect the premises owner to protect them from foreseeable third-party crimes, since only invitees and invited licensees are entitled to that expectation.

If a plaintiff establishes that he or she qualifies as an invitee, he or she must then prove that the crime or negligent act in question was one that the property owner or occupant should have foreseen. In cases where an injury resulted from a criminal or intentional act, the business owner's knowledge of past incidents at the premises by third parties may be sufficient to impose liability.²³ A landowner has a duty to protect an invitee on his premises from a criminal attack that is reasonably foreseeable.²⁴

Because crisis shelters often engage the services of third party service providers and volunteers who are invited to come onto the crisis shelter property, under current law, the shelter may be liable to a shelter participant, a service provider, or other invitee who is harmed by another invitee while on the crisis shelter property, even though the shelter may not have the authority or capability to regulate the shelter participant, third party service provider, or other invitee.

Effect of Proposed Changes

CS/HB 1397 limits the liability of a crisis shelter²⁵ when referring a shelter participant to a support service provider. The bill defines a crisis shelter as a facility providing temporary housing for persons experiencing homelessness or who are at risk of homelessness, regardless of the reasons, the length

¹⁷ 41 Fla. Jur 2d Premises Liability § 51.

¹⁸ *Lanza v. Polanin*, 581 So.2d 130 (Fla. 1991).

¹⁹ *Louisville & N.R. RR Co. v. Wade*, 35 So. 863 (Fla 1903).

²⁰ *Wood v. Camp*, 284 So. 2d 691 (Fla. 1973); *Shumake v. Florida East Coast Ry. Co.*, 534 So. 2d 1178 (Fla. 4th DCA 1988).

²¹ *Orlando v. FEI Hollywood, Inc.*, 898 So. 2d 167, 169 (Fla. 4th DCA 2005). *Barrio v. City of Miami Beach*, 698 So. 2d 1241 (Fla. 3d DCA 1997).

²² *Barrio*, 698 So. 2d 1241 (Fla. 3d DCA 1997).

²³ *Id.*

²⁴ *Ameijeiras v. Metro. Dade County*, 534 So. 2d 812, 813 (Fla. 3d DCA 1988).

²⁵ Crisis shelters include emergency shelters, hurricane evacuation shelters, homeless shelters, domestic violence shelters, runaway shelters, and traditional shelters.

of stay, or the extent of support services provided. However, the bill does not affect the liability of the support service provider.²⁶

Specifically, the bill limits a nonprofit crisis shelter providing, without remuneration, temporary housing in the shelter or support services, from civil liability arising from:

- Providing, or failing to provide, temporary housing or support services;
- A third party, with or without remuneration, or another nonprofit organization to whom referrals for support services are made or coordinated, regardless of whether the third party actually provides or fails to provide the services;
- Any criminal activity, theft, injury, loss, damage, or death caused by a shelter resident, another nonprofit organization, or a third party.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Creates a short title.

Section 2: Creates s. 95.39, F.S., relating to limitation upon claims against crisis shelters.

Section 3: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce a private person's ability to recover damages for harm he or she suffers at a crisis shelter.

D. FISCAL COMMENTS:

None.

²⁶ Support services include financial assistance, health and mental health care services; counseling; case management; resource coordination; assistance in applying for services or benefits, education, financial literacy, and child care.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Because the bill removes a private person's ability to recover damages for harm he or she suffers while at a crisis shelter, it may be appropriate for the bill to require a nonprofit crisis shelter to display a public awareness sign in a conspicuous location that is clearly visible to the public indicating the specific liability limitations provided under the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably. The amendment:

- Made a technical change to correct a misspelling; and
- Clarified that a "third party" includes a person providing support services with or without remuneration.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.